

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Roger McEwan

**ADMINISTRATIVE
CONSENT ORDER
NO. 2008-WW- 07**

**TO: Roger McEwan
PO Box 0068
Cylinder, IA
50528**

I. SUMMARY

This administrative consent order (order) is entered into between Mr. McEwan and the Iowa Department of Natural Resources (Department). Mr. McEwan hereby agrees pay a penalty of \$10,000.00 and in the future to never engage in an illegal discharge to a water of the state.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Nate Young, Field Office #3
Iowa Department of Natural Resources
1900 N Grand
Spencer, Iowa 50401
Phone: 712/262-4177

Relating to legal requirements:

Carrie Schoenchaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50309
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and Mr. McEwan hereby agree to the following statement of facts:

1. Mr. McEwan owned and operated a wastewater disposal system (disposal system) located at S 9, T 96, R31, in Palo Alto County, Iowa. On December 28, 2007, this property was sold to Todd Mathisen. This disposal system consisted of two washout bays that sloped to a concrete block pit which was approximately 50 feet long by 10 feet wide by 7 feet deep. Approximately 15 trailers per week were washed out, which required about 2000 gallons of wastewater per wash, which generated approximately 30,000 gallons of wastewater a week and approximately 1,560.00 gallons of wastewater per year. The concrete block pit can only hold a maximum of 23,563 gallons, the excess wastewater is pumped out at least 66 times a year. Mr. McEwan pumped this wastewater out of the disposal system and onto the ground which drained into a prairie pothole.
2. On September 6, 2007, Field Office 3 received a complaint alleging that Mr. McEwan was operating a livestock trucking business and was washing out trailers in a building on his property. The wastewater from washing out trailers was running out a door of the building and across a field.
3. On September 27, 2007, Nate Young, an Environmental Specialist of the Department investigated the complaint. While on site Mr. Young asked Mr. McEwan if he washed trucks other than his own at the facility. Mr. McEwan stated that he only washed out his own trucks. He also stated that he pumped the wastewater from the concrete structure into a wagon and then land applied it.
4. On October 18, 2007, another complaint regarding the truckwash was received by the Department.
5. On October 19, 2007, Mr. Young investigated the complaint. While onsite Mr. Young observed that in the field south of the building where the trucks were washed Mr. McEwan was pumping the wastewater in the concrete pit out onto the ground and allowing the wastewater to run out into the field. Mr. Young observed and photographed a large pile of solid waste that settled after the liquid ran off. It was at this time that Mr. Young realized that Mr. McEwan was not operating the facility as he had previously led the Department to believe.
6. On November 1, 2007, Mr. McEwan was sent a Notice of Violation (NOV). This NOV informed Mr. McEwan that he was in violation of the following rules: 567 IAC 64.2 (1) and 567 IAC 64.3 (1). This NOV instructed Mr. McEwan to discontinue use of the disposal system until the proper permits were obtained.

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IV. CONCLUSIONS OF LAW

The Department and Mr. McEwan hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts show noncompliance with this provision.
2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC 60 through 69. 567 IAC 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. 567 IAC 64.2(1) prohibits construction of a disposal system without a construction permit issued by the Director. The above stated facts show noncompliance with these provisions.

V. ORDER

THEREFORE, the Department orders and Mr. McEwan hereby agrees to comply with the following in order to cease, abate, and redress the above-cited violations:

1. In the future never engage in an illegal discharge to a water of the state; and
2. Within 30 days after signing this order, pay to the Department a penalty of \$10,000.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties for current violations.

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2. **Economic Benefit:** Mr. McEwan has been in operation for 4 years. On average he washes fifteen trailers per week. Mr. McEwan washed these trailers at his own unpermitted facility instead of taking them to a permitted facility where he would have been charged approximately \$100.00 per wash. Thus, Mr. McEwan saved several thousands of dollars over this time period. Nevertheless, the Department has a statutory limit of \$10,000.00 when assessing penalties; therefore, \$7,000.00 is assessed for this factor.

3. **Gravity of the Violation:** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. The ongoing use of an unpermitted facility and the unauthorized discharge pose a threat to the environment. Therefore, \$2,000.00 is assessed for this factor.

4. **Culpability:** Mr. McEwan has the duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

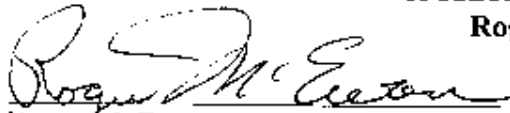
Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of Mr. McEwan. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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Dated this 12 day of

MAYch, 2008.


DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18 day of

March, 2008.

Field Office 3, Carrie Schoenebaum; Nate Young, I.B.2.a.

DOHHS FIELD OFFICE 3